

## **REMARKS**

With entry of this Amendment, claims 1-41 (informally renumbered) are pending in the application. By this Amendment, claims 12, 13, 17, 28 and 29 have been amended, and claim 27 cancelled, without prejudice, for clarity in accordance with the Examiner's suggestions. Support for the amendments herein is found in the specification as filed, e.g., at pp. 15-16, and in the original claims (e.g., claims 27-29). Claims 1-11, and 38-41 (informally renumbered) have been withdrawn, without prejudice, in response to a Restriction Requirement. Claims 12-37 are presented for current examination. Entry of this Amendment and reconsideration of the application in accordance with the remarks presented herein below are respectfully requested.

### Claim Objections

The Examiner kindly notes incorrect numbering of original claims 37-40. The subject, misnumbered claims have been withdrawn by this Amendment. Therefore, although the correct numeration of pending claims as "renumbered" by the Examiner is noted above, appropriate corrections will be held in abeyance pending filing of a related application to prosecute the withdrawn claims.

### Restriction Requirement

In the Restriction Requirement, claims 1-41 were restricted into the following two groups:

- I. Claims 1-11 and 38-41, drawn to a method of promoting hand sanitizing, classified in class 422, subclass 28.
- II. Claims 12-37, drawn to a disposable squeeze packet, classified in class 222, subclass 94.

Applicant hereby affirms the prior telephonic election of Group II, claims 12-27 for initial prosecution. In accordance with this election, claims 1-11, and 38-41 are hereby withdrawn. This election is made with traverse, and no representations are made by this election concerning the merits of the Restriction Requirement with respect to the possible existence of multiple distinct inventions among the originally presented claims.

Applicant reserves the right to pursue the subject matter of all non-elected claims in one or more related applications.

#### Patentability Under 35 USC § 112

Applicant notes for the record that the Office has not levied comments or rejections of any of the pending claims under 35 USC § 112, and on this basis Applicant believes that the pending claims have been reviewed and considered to fully conform to this Section of the Patent Act.

#### Patentability Under 35 USC §§ 102 and 103

The Office has rejected claims 12-21 and 24-35 under 35 USC § 102 as allegedly anticipated by USPN 2,976,988 (**'988 patent**) to Schneider. The Office relies upon the '988 patent for allegedly disclosing:

A flat packet 10a made of a flexible polymeric material sheet seal together, a first chamber 20a containing multiple doses of product, a second chamber 21a functioning as a valve for the fluid held within the first chamber and fill (sic) by squeezing with the finger the product in the first chamber, a partition 18a between the first and second chambers and having a fluid passage 23a, the partition is formed between the chambers where the barrier is form (sic) by two aligned segments as seen in Fig. 1 or two angled segments as seen in Fig. 9, a tear off exit port 25a to dispense product from (sic) by squeezing the product out of the second chamber, the polymeric material is transparent, allowing the user to see the content color and condition of the product inside the package. (Office Action Paper No. Mail Date 3232005, at pp. 3-4).

The Office further contends that, with respect to the package designed to hold and preserve hand-sanitizing fluid, "it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations." (citing *Ex parte Marsham*, 2 USPQ2d 1647 (1987) (Office Action Paper No. Mail Date 3232005, at p. 4).

In a related rejection, the Office rejects claims 22 and 23 under 35 USC § 103(a) as allegedly unpatentable over the above-cited '988 patent. In support of this rejection, the Office relies upon the '988 patent for allegedly showing all of the features of the invention as detailed above, but concedes that the '988 disclosure "is silent about the volume of the package first and second chambers." In this regard, the Office asserts that it would have been obvious to modify the size of the chamber of the '988 device "to meet the intended application, since the size of the chamber merely depends of factors such as the potency of the sanitizing solution or number of doses per day needed to be carried by the package (see column 3, lines 52-71) which are an obvious matter of design choice within the skill in the art, in addition, the volume of a standard package of ketchup is about 8 milliliter, this packages (sic) are very popular and cheap to manufacture." (Office Action Paper No. Mail Date 3232005, at pp. 4)

In a second related objection, the Office rejects claims 22 and 23 under 35 USC § 103(a) as allegedly unpatentable over the above-cited '988 patent in view of USPN 3,670,927 (**'927 patent**) to Hubbard. In support of this rejection, the Office relies upon the '988 patent for allegedly showing all of the features of the invention as detailed above, but concedes that the '988 disclosure "is silent about bearing marking." In this regard, the Office asserts that it would have been obvious to combine the features of the '988 patent as detailed above with an opaque insert to facilitate reading information markings as allegedly disclosed in the '927 patent.

Applicant respectfully traverses each of the foregoing rejections and underlying factual assertions levied by the Office, and submits that the cited '988 and '927 patents, taken alone or in combination, fail to teach or suggest the subject matter of any of the rejected claims, in their original form and as amended herein.

Applicant submits for the record that the rejections pertaining to the claims withdrawn herein are rendered moot by the withdrawal of these claims from current prosecution. Therefore, Applicant will not comment on the merits of these rejections, or of the underlying factual assertions presented by the Office in support of these rejections, and respectfully submits that these rejections and assertions are currently moot, and that the withdrawal of claims herein is fully without prejudice or acquiescence to the subject grounds for rejection.

Because of the related nature of the pending rejections as applied to the elected claims (claims 1-12), Applicant will address the subject rejections collectively.

As an initial point, Applicant notes that the disclosure of the '988 is principally directed to a multi-compartment container for dispensing dry materials, and particularly "tablets, pills and the like" (see, e.g., column 1, lines 61-63, column 2, lines 23-25). Relatively limited discussion is devoted to a proposed embodiment of the '988 invention allegedly adapted for containing and dispensing multiple doses of a product in a liquid form (see, e.g., column 4, line 28 to column 5, line 7; Fig.s 6-8).

As amended herein, pending independent claim 12, from which all of the remaining, pending claims depend directly or indirectly, recites the following, novel and inventive aspects of Applicant's technology.

12. A disposable squeeze packet for dispensing multiple doses of hand sanitizing fluid, comprising:

a packet designed to hold and preserve hand sanitizing fluid with the general form of a substantially flat sealed pouch made of flexible polymeric material with at least two distinct chambers in fluidic communication permitting inter-chamber fluid transfer when appropriate stresses are applied via the packet walls of said flexible polymeric material;

a first chamber capable of holding plural doses of said fluid;

a second chamber capable of receiving a measured dose of said fluid from said first chamber;

a partitioning means *constructed of a flexible polymeric material* separating adjacent first and second chambers, *said partitioning means having a fluid passage governing means formed at a passage gap in said partitioning means, wherein, when external pressure is applied to the walls of said first chamber, said fluid pressure is directed against said partitioning means adjacent said passage gap causing deformation of said flexible polymeric material to provide a self-forming choke by constricting said fluid passage formed by said passage gap, thereby resisting and blocking fluid flow between said first and second chambers;*  
and

said second chamber functioning as a dispensing valve means for said fluid held within when said fluid is pressure stripped from said second chamber through an exit means capable of being created in at least one wall of said second chamber to dispense said fluid. (emphasis added). .

The subject, disposable squeeze packet of Applicant's invention is fundamentally distinct from the solid and fluid dispensing containers addressed in the '988 patent. In one such fundamentally distinct aspect, the '988 patent clearly fails to teach or suggest a feature of a disposable squeeze packet comprising "partitioning means constructed of a flexible polymeric material separating adjacent first and second chambers, said partitioning means having a fluid passage governing means formed at a passage gap in said partitioning means, wherein, when external pressure is applied to the walls of said first chamber, said fluid pressure is directed against said partitioning means adjacent said passage gap causing deformation of said flexible polymeric material to provide a self-forming choke by constricting said fluid passage formed by said passage gap, thereby resisting and blocking fluid flow between said first and second chambers."

In this context, Applicant believes that the Office has misconstrued a critical structure/function aspect of the multi-chamber dispensing device of the '988 patent, which the Office refers to as "second chamber 21a functioning as a valve for the fluid held within the first chamber" (Office Action Paper No. Mail Date 3232005, at p. 3). In fact, the '988 patent nowhere uses or describes a "valve" feature of the disclosed device, and instead provides only a simple "transfer passage" between the two chambers (see, e.g., column 4, lines 36-52). This transfer passage and related structure of the '988 patent clearly fails to teach or suggest the instantly claimed "partitioning means", having "fluid passage governing means formed at a passage gap", such that "when external pressure is applied to the walls of said first chamber, said fluid pressure is directed against said partitioning means adjacent said passage gap causing deformation of said flexible polymeric material to provide a self-forming choke by constricting said fluid passage formed by said passage gap, thereby resisting and blocking fluid flow between said first and second chambers."

On the contrary, the '988 patent actually teaches away from these aspects of Applicant's invention. In particular, the '988 disclosure discusses how the "transfer passage 23a is forced open and liquid flows through it into the dispensing chamber 21a until the dispensing chamber is full", upon application of any significant pressure (i.e., more pressure than "when the container is lying on its side", when the transfer passage is supposed to be in a passively collapsed or closed configuration, see, e.g., column 4, lines 44-47).

These inapposite teachings of the '988 patent in comparison to the instantly claimed invention are further evinced by the discussion in the '988 patent, at column 4, line 66 to column 5, line 7. This section of the '988 disclosure specifically teaches that "[t]he discharge passage is preferably made larger than the transfer passage for two reasons." The second reason provided in this context is so "the lower dispensing pressure is less likely to open the transfer passage 23a and force any of the liquid back into the storage chamber from the dispensing chamber." Thus, the '988 disclosure expressly fails to provide any kind of "self-forming choke" design or functionality as presently claimed, i.e., that is constructed and operative to prevent fluid transfer between chambers in either direction in the absence of significantly increased pressure above moderate, direct pressure levels applied to the side walls, or active "pulling tension to said second chamber away from said first chamber, thereby opening said choke seal and permitting said fluid flow from said first to said second chamber" (see, e.g., claim 29).

Not only does the '988 device expressly lack these features and operability, it also directly discloses a distinct solution to the problem addressed by Applicant's invention, i.e., avoiding backflow from the dispensing chamber to the storage chamber by making the exit opening substantially larger than the "transfer passage."

These clear deficiencies of the '988 patent with regard to teaching or suggesting features of Applicant's claimed device should be even more apparent upon reference to the '988 description at column 5, lines 1-7. This portion of the disclosure states that:

However, reverse flow can be prevented positively by pressing together container walls 11a and 12a at the transfer passage to keep the passage closed during the time that liquid is being forced out through discharge passage 25a. This may be done by placing the thumb and forefinger

at opposite sides of the container and compressing passage  
23a.

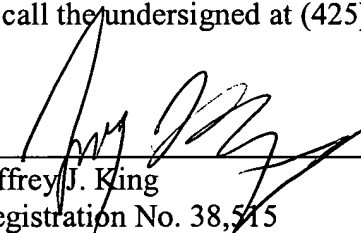
This description immediately evinces the lack of any kind of “self-forming choke” structure and functionality within the limited description of the ‘988 patent directed to fluid-containing packages.

In view of the foregoing, Applicant respectfully submits that the above-noted rejections of claims under 35 USC §§ 102 and 103 have been overcome, and that all claims pending in the application are novel and nonobvious over the ‘988 patent, taken alone or in combination with the ‘927 patent. As noted above, independent claim 12 recites novel and distinct features that are neither disclosed nor suggested by the cited reference(s). Each of the pending, dependent claims are believed to be patentable on this basis. In addition, the dependent claims recite further novel and distinct aspects of the invention, which Applicant reserves the right to address further pending the Office’s reconsideration of the principal embodiment based on the remarks herein.

#### CONCLUSION

In view of the foregoing, Applicant believes that all claims now pending and under examination in this application are in condition for allowance and an action to that end is respectfully urged. If the Examiner believes that a telephone conference would aid in the prosecution of this case in any way, please call the undersigned at (425) 455-5575.

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Jeffrey J. King  
Registration No. 38,515  
Graybeal Jackson Haley LLP  
155 - 108th Avenue N.E., Suite 350  
Bellevue, WA 98004-5901  
Telephone: (425) 455-5575  
Facsimile: (425) 455-1046